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9  
10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
12 SOUTHERN DIVISION

13  
14 **XINGFEI LUO,**

15 Petitioner,

16 v.

17 **THE PEOPLE OF THE STATE OF**  
18 **CALIFORNIA,**

19 Respondent.

8:22-cv-01640-MEMF-KES

**ANSWER TO PETITION FOR  
WRIT OF HABEAS CORPUS**

Judge: The Honorable Karen E.  
Scott

Action Filed: 9/06/2022

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22 Respondent respectfully submits this Answer to the Amended Petition for Writ  
23 of Habeas Corpus under this Court's Order and in accordance with Rule 5 of the  
24 Rules Governing Section 2254 Cases in the United States District Court.

25 Respondent denies all allegations contained in Petitioner Xingfei Luo Petition  
26 that her custody is unlawful and hereby asserts:  
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1 **I.**

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3 Luo is lawfully in Respondent's custody, serving a three-year term of informal  
4 probation for misdemeanor convictions of vandalism, unlawfully disseminating  
5 private photographs, violating a protective order.

6 **II.**

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8 The Petition for Writ of Habeas Corpus is subject to the relitigation bar  
9 Congress enacted in 28 U.S.C. § 2254(d). To warrant relief, Luo bears the burden  
10 of showing that the state court's adjudication on the merits of his claims resulted in  
11 a decision that was "contrary to, or involved an unreasonable application of, clearly  
12 established Federal law, as determined by the" United States Supreme Court, or  
13 was "based on an unreasonable determination of facts in light of the evidence  
14 presented." § 2254(d).

15 **III.**

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17 The Petition is timely.

18 **IV.**

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20 In her Amended Petition before this Court, Luo raises thirty-five claims.  
21 Among these many claims are: First Amendment challenges to the constitutionality  
22 of California's unlawful distribution statute and protective orders; several asserted  
23 *Brady*<sup>1</sup> violations; allegations of suborned perjury and other acts of misconduct by  
24 the prosecutor and law enforcement; purported violations of Luo's speedy trial  
25 rights by the state and the public defender's office; attacks on the sufficiency of  
26 evidence concerning multiple elements of the offenses and restitution order; claims  
27 of federal and state law error concerning jury instructions and the unlawful

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<sup>1</sup> *Brady v. Maryland*, 373 U.S. 83 (1963) (*Brady*)

1 admission of testimonial hearsay, compelled self-incrimination, and unduly  
2 prejudicial exhibits; as well as an assertion of factual innocence; and a plethora of  
3 ineffective assistance claims as to trial and appellate counsel, ranging from alleged  
4 failure to investigate and breakdown in communication to complaints about  
5 counsels' argument selection and tactical choices about objections and witness  
6 examination.

7       None of these arguments warrant relief. A number of them are not cognizable  
8 on federal habeas review, either because they do not allege a violation of federal  
9 law or do not raise a challenge affecting the validity of Luo's convictions or the  
10 legality of the state's custody over her. Furthermore, most of these claims have  
11 been defaulted through various independent and adequate state procedural bars,  
12 stemming from her failure to file contemporaneous objections at trial, failure to  
13 raise available issues on direct appeal, improperly raising sufficiency challenges  
14 through collateral attack, and presenting her habeas claims to the state courts in  
15 piecemeal fashion through successive petitions. Luo has failed to offer cause to  
16 excuse her defaults, and she cannot show actual prejudice or a miscarriage of  
17 justice from a violation of federal law because each of her assertions fails on the  
18 merits. With regard to her remaining claims for relief, Luo has not met her exacting  
19 burden to show that the California courts' resolution of those claims was contrary  
20 to, or based on an unreasonable application, of clearly established United States  
21 Supreme Court authority.

22       This Court should deny the Amended Petition.  
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1 **V.**

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3 To the extent the state courts made express and implied factual findings, the  
4 presumption of correctness mandated by 28 U.S.C. § 2254(e)(1) applies to such  
5 findings.

6 **VI.**

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8 Luo is not entitled to an evidentiary hearing to resolve any of his claims. 28  
9 U.S.C. § 2254(e)(2); *Cullen v. Pinholster*, 563 U.S. 170 (2011).

10 **VII.**

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12 The relevant facts and procedural history set forth in the accompanying  
13 Memorandum of Points and Authorities are incorporated herein by this reference.  
14 Except as expressly admitted here or in the Memorandum of Points and Authorities,  
15 Respondent denies that Luo confinement is improper, unconstitutional, or unlawful.  
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1           Wherefore, Respondent respectfully requests that the Amended Petition for  
2   Writ of Habeas Corpus be denied and that any request for a certificate of  
3   appealability be denied.

4  
5   Dated: November 15, 2023

Respectfully submitted,

6           ROB BONTA  
7           Attorney General of California  
8           CHRISTOPHER P. BEESLEY  
9           Supervising Deputy Attorney General

10           /s/ Michael D. Butera  
11           MICHAEL D. BUTERA  
12           Deputy Attorney General  
13           Attorneys for Respondent

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## CERTIFICATE OF SERVICE

Case Name: **Luo v. The People of the State  
of California**

No. **8:22-cv-01640-MEMF-KES**

I hereby certify that on November 15, 2023, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

### ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On November 15, 2023, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Xingfei Luo  
P.O. Box 4886  
El Monte, CA 91734  
*Petitioner in Pro Se*

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on November 15, 2023, at San Diego, California.

K. Yeoun  
Declarant

/s/ K. Yeoun  
Signature